SINGLE BENCH

(5) (3)

CF 1002

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT

BILASPUR

W.P.(C) NO. 48 / 2007

Petitioner : Bajranglal Agarwal, Aged about 53 years S/o Maturam Agarwal, Partner M/s Gopiram Maturam (Kerosene Oil) Kerosene Oil Dealer, a registered partnership firm at Sarangarh road, near Railway Crossing Raigarh, Dist : Raigarh-(C.G.)

P.R. No. 7263/06 Roop Nath 12/12/06

RECEIVED COPY 12/12/06 AMIT CHAUDHARI STANDING COUNSEL RAILWAYS HIGH COURT OF CHHATTISGARH

Versus

Respondents : 1. Union of India Through The Secretary Railways, Railbhawan, New Delhi.

2. The Divisional Railway Manager, South Eastern Central Railway, Bilaspur-(C.G.)

3. The Estate Officer South Eastern Central Railway Estate Office, Bilaspur-(C.G.)

4. The Collector, Raigarh-(C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF MANDAMUS / CERTIORARI AND / OR FOR ORDERS IN NATURE OF WRITS.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.(C).48/07 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	11.1.2007 Shri Kishore Bhaduri learned Counsel for the petitioner. Shri Vinay Harit learned Sr. Counsel with Shri N.K. Shrivastava for respondents 1 to 4. This petition is directed against the order of annexure P-1 passed by the Estate Officer under sub section (1) of Section 5 of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short the Act of 1971) whereby a notice has been issued to the petitioner to show cause as to why the unauthorized structure existing on the Railway land should not be removed. After affording opportunity of hearing to the petitioner the Estate Officer directed the petitioner to hand over the vacant possession of the said plot within 15 days from communication of the order failing which they shall be liable for eviction from the said plot, if need be, by use of force. Learned counsel for the petitioner submits that the petitioner cannot comply with the order of the Estate Officer unless he is permitted by the Collector to shift his tank and for the said purpose. The petitioner applied before the Collector and also filed a writ petition to issue No Objection Certificate for shifting the tank and in the aforesaid circumstances the petitioner has sought a relief to the effect that the Railways be directed not to implement the order impugned till the disposal of Writ Petition No. 6947/2006 filed by the petitioner. He submits that the above petition has been disposed of with a direction to the Collector to decide his application for No Objection Certificate within a period of two weeks from 2.1.2007. He further submits that the respondents are bent upon to dismantle the	

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

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tank containing kerosene with the use of force and in the aforesaid circumstances, effect and operation of the order impugned deserves to be stayed till the disposal of the above petition.

Admittedly the impugned order has been passed by the Estate Officer way back on 24.11.2006 while exercising jurisdiction under the Act of 1971. Petitioner had a remedy of filing appeal against the order impugned under Act of 1971 however, instead of that he chose to file this writ petition. The prayer in the petition is that effect and operation of the impugned order be stayed till the disposal of the writ petition which stands disposed of as per admission of the petitioner on 2.1.2007.

In these circumstances this Court is of the opinion that firstly the instant petition is not maintainable on the ground of availability of alternative remedy and secondly the prayer in this petition has also become infructuous and that petition i.e. 6947/2006 also stands disposed of on 2.1.2006. Apprehension of the petitioner that the Collector is bent upon to dismantle the tank without complying with the directions of the High Court may be dealt with in appropriate proceedings by the petitioner.

Sd/-
Dhirendra Mishra
Judge

P.T.O.